Supreme Court, U.S.
FILED

180 (1)

Docket Number: 101277

FEB 11 2011

OFFICE OF THE CLERK

In The
SUPREME COURT OF THE UNITED STATES

ELIZABETH K. CAMPBELL

Petitioner

v.

KELLERMYER BUILDING SERVICES, LLC

Respondent

On Petition for Writ of Certiorari
to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Elizabeth K. Campbell, pro se
2510 Edgewood Drive
Pittsburgh, PA 15241
(412) 401-0467

QUESTIONS PRESENTED FOR REVIEW

Whether Petitioner was denied procedural due process when the state appellate courts denied her appeal for having failed to initially file post trial motions with the trial court, even though her appeal was timely filed, and where the state court rules do not explicitly require post trial motions in order to preserve appellate issues?

LIST OF ALL PARTIES

Elizabeth K. Campbell
2510 Edgewood Drive
Pittsburgh, PA 15241

Kiethley D. Mulvihill, Esquire
Rawle & Henderson, LLP
Henry W. Oliver Building
535 Smithfield Street, Ste. 1000
Pittsburgh, PA 15222

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CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS

Pennsylvania Supreme Court
Docket No, WAL 2010

Superior Court of Pennsylvania
Docket No. 4 WDA 2010

Allegheny County Court of Common Pleas
Docket No. GD-08-00785S

STATEMENT OF BASIS OF JURISDICITION

This Court has jurisdiction to review the judgment and order in question by reason of 28 U.S.C. §1257.

STATUTORY PROVISIONS

Constitutional Provisions Involved:

Amendment 14. Section 1, Constitution of the United States:

" All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

> the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner Elizabeth Campbell filed her initial action in the Court of Common Pleas of Allegheny County, Pennsylvania, claiming damages for personal injuries suffered by her in a slip and fall on premises maintained by Kellermyer Building Services, LLC ("Kellermyer"). A jury returned a verdict in favor of Kellermyer on November 10, 2009. Campbell did not file post trial motions. Kellermyer entered judgment on

November 30, 2009.

Campbell filed an appeal on December 30, 2010. The trial judge entered a Statement in Lieu of Opinion dated February 9, 2010, to the effect that Campbell waved any right to appellate review by not filing post trial motions.

Pennsylvania Rule of Civil Procedure 227.1 docs require that, post trial motions be filed within ten days of verdict, but it does not provide that appellate issues are waived by not filing a timely post trial motion.

The Superior Court of Pennsylvania quashed Campbell's appeal by Order dated April 8, 2010, for not having filed post trial motions. Campbell filed a timely Petition, for Allowance of Appeal to the Supreme Court of Pennsylvania on

May 7, 2010, which was denied by Order dated October 15, 2010. Campbell's Application for Reconsideration was denied on November 16, 2010.

REASONS FOR GRANTING THE WRIT

The reason the writ should be allowed in this case is that it is fundamentally unfair and in contradiction to Amendment 14 of the United States Constitution that Campbell's appellate rights should be waived for failing to file post trial motions when, the rule of procedure that governs post trial motions does not provide that failure to file post trial motions precludes any appellate review.

Respectfully submitted,
Elizabcth K. Campbell

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. GD 08-7853

Filed February 10, 2010

ELIZABETH CAMPBELL. Plaintiff,

v.

KELLERMEYER BUILDING SERVICES, LLC,

Defendant

STATEMENT IN LIEU OF OPINION

Honorable Timothy P. O'Reilly
Senior Judge

Copies Sent To:
Elizabeth K. Campbell
2510 Edgewood Drive
Pittsburgh, PA 15241

Kiethley D. Mulvihill, Esquire
Rawle & Henderson, LLP
Henry W. Oliver Building
535 Smithfield Street, Ste. 1000
Pittsburgh, PA 15222

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. GD 08-7853

ELIZABETH CAMPBELL,

Plaintiff,

v.

KELLERMEYER BUILDING SERVICES, LLC,
Defendant.

STATEMENT IN LIEU OF OPINION

O'Reilly, J. Decided: February 2010

This matter involves a slip and fall suffered by Plaintiff Elizabeth K. Campbell (Campbell) on premises controlled by Defendant Kellermeyer Building Services, LLC (Kellermeyer). The matter was tried before a jury, which on November 10, 2009 found in favor of Kellermeyer and against Campbell. No Post-trial Motion was filed by Campbell and on November 30, 2009 Kellermeyer praeciped to Judgment that verdict. Campbell thereafter filed her Appeal to Superior

Court on December 30, 2009. It has now come to me under Rule 1925(a).

Initially I believe this matter is untimely and subject to a motion to quash. Specifically, the verdict was returned on November 10, 2009. Under Rule 227.1, a Motion for Post-trial Relief must be filed within 10 days of the verdict, that is, November 20, 2009. Here, none was filed at all and

Kellermeyer properly took judgment on the verdict on November 30, 2009. While Campbell's Appeal on December 30, 2009 was timely with regard to entry of the judgment, she has waived whatever exceptions she may have had by not filing a Post-trial Motion. See in particular LB. Foster v. Lane Enterprise, 710 A,2d, 55 (Pa. 1998).

Therefore, I can offer no further information since I do not know the basis for the Appeal.

Date: 2-09-2010 signed/ O'Reilly, J.

Superior Court of Pennsylvania

Western District

CERTIFICATE OF REMITTANCE/REMAND OF RECORD

Filed November 18,2010

TO: Mr. McGeever
Civil Division Manager

RE: Campbell, E. v. Kellemeyer Building Services LLC
4WDA2010
Trial Court: Allegheny County Court of Common Pleas
Trial Court Docket No: GD-08-007853
Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2571 is the entire record for the above matter,

Original Record contents

Item	Filed Date	Description
Original Record	February 18, 2010	3 Parts
Transcripts	February 18, 2010	1

Additional Item(s): SUPERIOR COURT

CERTIFIED COPY OF ORDER AND SUPREME COURT ALLOCATOR DISPOSITION SHEETS

Remand/Remittal Date: 11/18/2010

ORIGINAL RECIEPT ONLY – Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt,

Very truly yours
Signed Eleanor R. Valecko
Eleanor R. Valecko
Deputy Prothonotary

/bnl

Enclosure

cc: Elizabeth K, Campbell
Keithley D, Mulvihill, Esq.
The Honorable Timothy Patrick OReilly, Judge

In the Superior Court of Pennsylvania

Sitting at Pittsburgh

No. 4WDA2010

Elizabeth K. Campbell, Appellant

v.

Kellemeyer Building Services. LLC

Appeal from the Order entered in this matter on November 30, 2009, by the Hon. Timothy Patrick O'Reilly, Court of Common Pleas Civil Div. of the County of Allegheny at No. GD 08-007853

CERTIFIED FROM THE RECORD

ORDER

"This appeal has been filed from the entry of a jury verdict. No post-trial motions were filed as required by Pa.R.C.P. 227.1, thus, it appears that all Issues have been waived. See also Harman v. Borah, 756 A.2d 1116 (Pa. Super, 2000) (post-trial motions are required to preserve issues for review). Therefore, appeal is hereby QUASHED, sua sponte.

Date: April 8, 2010 PER CURIAM

Testimony Whereof, I have hereunto set my hand

and the seal of said Court at Pittsburgh, Pennsylvania
This 18th Day of November 2010

Signed Elanor R Valecko
Deputy Prothonotary

Supreme Court of Pennsylvania
Western District
November 16, 2010

Mr. Michael McGeever
Civil Division Manager
First Floor
City-County Building
414 Grant Street
Pittsburgh. PA 15219

Filed November 18,2010
RE: Elizabeth K. Campbell, Petitioner
v.
Kellemeyer Building Services, LLC, Respondent
No. 222 WAL 2010
Consolidated Cases

Trial Court Docket: GD-08-007853

Docket Number:

Appeal Docket No:

Date Petition for Allowance of Appeal Filed:
May 7, 2010
Disposition: Order Denying Petition for
Allowance of Appeal
Disposition Date: October 15, 2010

Reargument/Reconsideration Disposition:
Order

Denying Application for Reconsideration

Reargument/Reconsideration Disposition Date:
November 16, 2010

/dad
Enclosure

IN THE SUPREME COURT OF
PENNSYLVANIA WESTERN DISTRICT

No. 222 WAL2010

Petition for Allowance of Appeal from the Order of the Superior Court

ELIZABETH K. CAMPBELL, Petitioner

v.

KELLEMEYER BUILDING SERVICES, LLC,

Respondent

ORDER

PER CURIAM

AND NOW, this 15th day of October, 2010, the Petition for Allowance of Appeal is hereby DENIED.

A True Copy Patricia Nicola
As October 15. 2010
Attest:
Chief Clerk
Signed Patricia Nicola
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 222 WAL 2010 Application for Reconsideration

ELIZABETH K. CAMPBELL. Petitioner

v.

KELLEMEYER BUILDING SERVICES, LLC,
Respondent

ORDER

PER CURIAM

AND NOW, this 16th day of November, 2010, the Application for Reconsideration is hereby DENIED.

A True Copy Patricia Nicola

As of: November 16, 2010
Attest: signed Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania